

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

NELSON MOLINA,

Plaintiff(s),

No. C 06-4742 PJH

v.

ORDER

CITY OF SAN RAFAEL, et al.,

Defendant(s).

Before the court are two motions. On November 28, 2007, plaintiff filed an administrative motion for leave to file a motion to amend his complaint. He represents in his motion that defendants do not oppose his administrative motion, but will oppose a motion to amend. The court assumes that plaintiff filed a request for leave to file a motion to amend rather than simply a motion for leave to amend, because the deadline for filing motions to amend was set in this court's November 14, 2006 case management order as no later than ninety days before the fact discovery cutoff date. The discovery cutoff date was June 29, 2007, and thus the deadline for filing the motion that plaintiff now seeks to file was March 29, 2007.

In view of defendants' non-opposition to the administrative motion, the court does not wait for the three days afforded defendants by the local rules to oppose. The motion is GRANTED; plaintiff may file his motion. Plaintiff did not request, but the court suspects that he will seek to have the motion heard on shortened time. Plaintiff is advised, however, that the motion must be duly noticed as required by Civil Local Rule 7-2. In view of the upcoming holidays, the court's December calendars are already full and motions already filed are being continued.

1 The second motion, filed on November 29, 2007, is a joint administrative motion to
2 continue the trial and/or pretrial conference date. The basis for the request is less than
3 clear, but appears to be related to the motion to amend. The parties advise that the fact
4 discovery cutoff date was extended by stipulation from June 29, 2007 to mid-November
5 and that plaintiff seeks to amend the complaint apparently based on evidence discovered
6 during that extended discovery period.

7 The motion to continue the trial date is DENIED for the following reasons. First, the
8 court will not continue a trial date scheduled more than a year ago, based on how a motion
9 not yet filed or granted, will affect trial preparation. Second, the court was not requested to
10 nor did it approve an enlargement of the discovery period. The pretrial order clearly warns:

11 The parties may not modify the pretrial schedule by
12 stipulation....The parties are advised that if they stipulate to a
13 change in the discovery schedule, they do so at their own risk.
The only discovery schedule that the court will enforce is the
one set in this order.

14 Thus, to the extent that plaintiff is faced with a dilemma regarding newly discovered
15 information, it is of his own making. Third, the court may modify a pretrial schedule "if it
16 cannot reasonably be met despite the diligence of the party seeking the extension." Fed.
17 R. Civ. P. 16, Advisory Committee Notes (1983 Amendment). Carelessness is not
18 compatible with a finding of diligence and offers no reason for a grant of relief. Johnson v.
19 Mammoth Recreations, Inc., 975 F.2d 604, 609 (9th Cir.1992). The court would be hard
20 pressed to find that the parties have acted diligently when they apparently completed
21 discovery more than four months after the deadline set by the court and where plaintiff has
22 sought leave to amend his complaint a month after discovering the purported basis for
23 doing so and only a few days before pretrial filings are due.

24 It appears to the court that the parties have simply ignored portions of the court's
25 pretrial order and now find themselves pressed for time to comply with the remaining
26 portions. The trial will go forward as scheduled, and will be continued only if a conflict with
27 a criminal case arises on this court's calendar. However, given the press of business that
28

1 this court will face on January 3, 2008, the pretrial conference scheduled for that day will be
2 continued to January 10, 2008.

3 **IT IS SO ORDERED.**

4 Dated: November 30, 2007



PHYLLIS J. HAMILTON
United States District Judge